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**Via Electronic Mail and Federal Express**

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**Re: Verification of Audit Items Identified as Closed in January 31, 2006 Letter**

Dear Ms. Behles and Ms. Fidler:

As discussed at our July 23, 2007 meeting, INVISTA conducted a verification review of the audit findings identified as having corrective action completed as of INVISTA's January 31, 2006 Corporate Audit Agreement Final Report, which was submitted pursuant to INVISTA's corporate auditing agreement with the United States Environmental Protection Agency ("EPA")(the "Audit Agreement") and as modified by the May 31, 2006 Update on the Final Audit Report.<sup>1</sup> The results of that review were reported to you in our July 23 meeting, and are updated and summarized below.

**I. Process**

INVISTA retained both outside counsel, Jane F. Barrett, Esq., and, at the request of the INVISTA Board of Directors, Koch Industries, Inc., Associate General Counsel, Laurie C. Sahatjian, to direct and oversee the audit closure verification process. At the direction of Ms. Barrett and Ms. Sahatjian, INVISTA corporate environmental counsel worked with outside

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<sup>1</sup> The Audit Agreement consists of INVISTA's July 28, 2004 Letter to Mr. Robert Kaplan, Mr. Kaplan's August 12, 2004 response, and INVISTA's September 3, 2004 response.

counsel and technical resources, where appropriate, to conduct an on-site review of documentary and/or physical evidence to verify that each audit finding was closed as stated in the Final Report. INVISTA did not review items that were identified as "open," are the subject of ongoing negotiations with EPA and the Department of Justice (DOJ), or related to sites no longer owned by INVISTA.<sup>2</sup>

The verification teams, led by Brian W. Curtis, II, Esq. (Senior Counsel – EHS, INVISTA S.à r.l.) for INVISTA) for Texas intermediate facilities and David S. Hoffmann, Esq. (Senior Counsel - EHS, INVISTA S.à r.l.), for the remaining facilities, physically visited each plant and conducted the verification review. The verification review consisted of a review of the audit file at each plant, discussions with EHS staff and other plant personnel, field verification where necessary or appropriate (including random spot checks of audit findings), and review of other relevant files to confirm closure.

The verification teams were able to confirm the vast majority of items identified as being closed based on closure documentation contained in the audit file maintained at each facility. In addition, the verification teams conducted random field checks on these closed items, which confirmed that the audit file was correct. For items for which the facility audit file was incomplete, the verification team engaged in follow-up discovery, which consisted of physical verification (for example, observation of signage in place, observation of satellite storage areas, etc.) or review of other relevant files (for example, permit files where the audit finding required that a permit be obtained or modified), to confirm closure. Where additional corrective action was necessary, the teams worked with the facilities to ensure those corrective actions were initiated.

## **II. Status**

INVISTA's verification teams have been able to confirm that 655 of the 674 items identified in its January 31, 2006 Final Audit report as being complete were completed as of the verification review. This includes verification of the LaPorte, TX, HON Audit findings, and EPCRA/TRI Audit findings, neither of which had been reviewed as of our July 23 meeting.

The verification teams have identified 12 items for which corrective action was not fully implemented or was incomplete, and identified only 2 items for which corrective action was not taken. In addition, there are 5 issues for which corrective action is believed to have occurred, but complete documentation is missing. While the facilities in question are continuing to search for the closure documentation, that documentation may not be found. The enclosed summary of audit verification results lists each of these items by audit ID number, audit finding, and description of the condition of closure observed by the verification team.

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<sup>2</sup> INVISTA's verification teams did not review audit findings relating to (a) Orange CAMS #9 (flue gas condensate issue), (b) PSD or Benzene NESHAP (corrective action subject of ongoing negotiations), (c) Orange Self-identified #9 (HCN flare, corrective action subject of ongoing negotiations); (d) the woodlined conveyance systems at LaPorte, Victoria and Orange, Texas (additional review of regulatory status is ongoing); or (e) Kinston and Kentec, North Carolina facilities (no longer owned by INVISTA).

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### III. Conclusion

As we have consistently informed you, INVISTA takes its compliance obligations very seriously and is committed to operating compliant facilities. This commitment is manifested by the process INVISTA invested in to identify any inadequacies in audits conducted pursuant to the Global Corporate Audit Agreement. INVISTA's audit verification teams followed a rigorous process to ensure that each item identified as "closed" by INVISTA had been properly closed and documented. As of today's date, INVISTA has completed its verification efforts and believes that the small number of incomplete findings is evidence of its commitment to its obligations under the Audit Agreement and to its compliance obligations. While we of course regret that any issue is not completely and satisfactorily closed, the verification process has been a valuable tool in identifying gaps in the systems that we have been working to put into place at the facilities and has overwhelmingly confirmed that facility personnel have taken seriously their obligations.

Please give me a call if you have any questions or require additional information.

Sincerely,



Christopher R. Graham

Enclosure



## AUDIT VERIFICATION RESULTS

### **I. Corrective action partially implemented; follow-up on remaining corrective action needed and being implemented.**

#### Athens, GA

1. Item #13: 40 CFR 273.15

Finding: Spent fluorescent lamps are classified as universal wastes and stored in appropriate cardboard boxes in the chemical shed. Accumulation dates are not recorded on the cardboard boxes. The facility cannot demonstrate that the accumulation times for the spent lamps have not exceeded one year in accordance with the prescribed procedures in the regulation.

Verification Status: Facility included broken lamps in its UW inventory; facility will correct UW management procedure so that broken lamps are not managed as UW, but hazardous waste.

2. Item # 16: 40 CFR 262.40(c)

Finding: No records were found documenting hazardous waste determinations made for the parts washer solvent, waste aerosol cans, fork truck wash area trap waste, and rags used with the magnaflux in the power area. In addition, there were no records of the hazardous waste determination made in association with used antifreeze waste, D006 and D007, shipped from the facility in July 2004.

Verification Status: Facility is managing all spent aerosol cans as non-hazardous waste; facility will correct its waste management plan so that spent aerosol cans that should be classified as hazardous will be managed as hazardous waste.

#### Calhoun, GA

1. Item # 3: GA 391-3-11.18

Finding: The State of Georgia has incorporated by reference the hazardous waste regulations relative to standards for generators of universal waste. The universal waste categories include spent (intact) mercury containing fluorescent lamps, metal halide lamps, mercury vapor lamps, mercury containing thermostats and other devices, and batteries.

Verification Status: Some spent (intact) lamps have been stored on site for over 1 year; facility will revise management procedures so that spent lamps are removed for disposal within the required time frame.

#### Chattanooga, TN

1. Item #6: 40 CFR 82.166(j) and 82.156(i)(2)

Finding: With respect to the air conditioning and refrigeration units serviced by Johnson Controls, records were not maintained at the site showing the date, type of service and quantity and type of refrigerant added. The Johnson Controls technician indicated that the records are sent to a Johnson Controls office in Nashville. In addition, the Johnson Controls technician indicated that some of the refrigeration units have charges greater than 50lbs, but that neither Johnson Controls or nor the Facility have a complete listing of units showing charge quantity and refrigeration type. Johnson Controls is not calculating leak rates on all units. There was insufficient data to evaluate whether allowable leak rates have been exceeded.

Verification Status: Facility utilizes two 3rd party vendors to maintain all regulated refrigeration units. Both vendors completed requirements identified in the audit finding, except recording date of discovery of leaks; leak rate calculations indicated exceedances of 15%/35% thresholds. According to vendors, leaks are repaired immediately upon discovery, but neither vendor recorded date of leak detection. The facility has updated unit tracking forms and discussed all recordkeeping requirements, including leak detection date, with both vendors to insure that all data and leak rate calculations are captured during maintenance activities.

2. Item # 47: 40 CFR 262.11

Finding: A discarded air conditioning unit was observed on a pallet behind the truck garage. A proper waste determination must be conducted on the unit.

Verification Status: Corrective action partially implemented; follow-up on remaining corrective action needed and being implemented. Audit file review indicates that freon was "exhausted" from unit and unit disposed, but no evidence that a waste characterization was performed. Facility will revise Waste Management Plan to include proper procedures for characterization and disposal of discarded equipment including A-C units.

Martinsville, VA

1. Item #6: 9 VAC 20-60.A.265.16

Finding: No job descriptions exist in the facility Hazardous Waste Contingency Plan for individuals that generate and manage hazardous waste at the Kitamura machines.

Verification Status: The facility has prepared general job descriptions, but those descriptions do not specify which individuals have requisite skill, education and duties assigned to hazardous waste management; facility is in the process of correcting the plan to correct this deficiency.

2. Item #14: 9 VAC 20-60.273(B)(3)(b) and (B)(3)(c)(2)

Finding: The facility does not have written procedures specifying how the facility intends to handle and store lamps safely.

Verification Status: Spent lamp management procedures indicate that broken lamps are to be managed as UW, contrary to UW regulations; site is in process of modifying procedures so that broken lamps are managed as hazardous waste, as appropriate.

### Seaford, DE

1. Item # 52: DE AST Reg. Part C §1.1.2

Finding: The facility has gauging records for the large fuel storage tanks but has not implemented an inventory reconciliation procedure.

Verification Status: Facility has installed equipment for tank reconciliation procedure; however, inventory reconciliation is not being recorded because of complexity of tank feed lines and difficulty in performing reconciliation; facility is in the process of seeking guidance from DNREC to assist in resolving this issue and to determine whether these tanks qualify for regulatory definition of "process tanks."

### Waynesboro, VA

1. Item # 36: 40 CFR 112.7(f)

Finding: The Federal Oil Spill Response Plan which includes the plant's SPCC Plan does not mention SPCC training nor annual discharge prevention briefings as required.

Verification Status: Training has not been updated to include annual discharge briefing on plan updates during calendar year 2006; since the verification, the facility has addressed this deficiency by adding to compliance calendar and providing additional training to affected employees.

2. Item #41: 40 CFR 112.8(d)(5)

Finding: No warning signs were observed at overhead piping locations.

Verification Status: Warning signs were placed on overhead piping locations, but the facility could not document 2006 annual inspection of warning signs on overhead piping; since the verification, the facility added the inspection requirement to the compliance calendar and will retrain affected employees.

3. Item #59: 9 VAC 20-60.A.265.16

Finding: Although job titles exist for individuals that manage hazardous waste at the facility, job descriptions do not include the requisite skill, education or other qualifications and duties of facility personnel assigned to hazardous waste management.

Verification Status: Insufficient documentation to demonstrate that identified individuals have requisite skill, education or other qualifications; facility adding documentation to hazardous waste management plan.

### Orange, TX

1. Item #17 (Potential Exception): 30 TAC Chapter 334

Finding: Sumps that exist within process areas and tank farm are greater than 110 gallons in capacity and are used to contain regulated substances that are inadvertently.



released or are purged from the system. The content and use of these sumps are not clearly nor consistently identified, and so information is not available to determine applicability under either UST or RCRA regulations.

Verification Status: Facility completed UST review; but did not complete RCRA analysis. Facility is reconfirming the adequacy of the UST and RCRA applicability determinations for the sumps.

## **II. Corrective Action Not Taken Prior to Verification**

### **Victoria, TX**

1. Item #36: 30 T.A.C. §§116.110(a) & 106.454(1)(A)(ii)

Finding: Facility is not maintaining records of solvent usage on a monthly basis for three degreasers authorized under §106.454.

Verification Status: Facility has been maintaining annual solvent usage records; facility addressed the issue after the verification review by initiating monthly records as of July 9, 2007 and putting the requirement to maintain monthly records on the compliance wall chart.

### **Waynesboro, VA**

1. Item # 35: 40 CFR 112.8(b)(1)

Finding: Procedures are in place to document the draining of precipitation from secondary containment dikes but a portion of the records for draining dike 801 in 2004 were not available.

Verification Status: Facility records for documenting inspection of precipitation in secondary containment prior to draining do not exist; facility addressing this deficiency with additional documentation, training, and addition to compliance calendar.

## **III. Verification Pending/Documentation Not Found**

### **Camden, SC**

1. Item #34: S.C. Code Regs. 61-79.273.15

Finding: Spent fluorescent lamps stored west of the BCF repack scales and south of the BCF repack spur conveyor did not have an accumulation start date.

Verification Status: Documentation of proper disposal of used fluorescent lamps missing from audit file and could not be verified; site attempting to obtain disposal documentation.

## Waynesboro, VA

1. Item #52: 9 VAC 60.A.273.9

Finding: UW light bulbs were found in improper places.

Verification Status: No documentation in audit file of proper disposal of bulbs; facility attempting to obtain documentation.

## LaPorte, TX

1. EPCRA/TRI Audit #1: 40 C.F.R. § 370.41

Finding: Hazards as identified on the Tier II reports were inconsistent with hazards as identified on MSDSs for 30% of the chemicals checked, including: cupric carbonate; dewatered copper catalyst; diatomaceous earth; ethylene glycol; LRD35-THF mixture; Nafion NR 50; nitrogen; recycle THF; rice hull ash; sodium hydroxide; sodium hypochlorite; Terathane; Ucon Oil 50 HB 660.

Verification Status: October 26, 2004 letter to the SERC with updated Tier II Report located; the October letter references the July 29, 2004 Tier II submission (which cannot currently be located at the Site).

## Orange, TX

1. CAMS # 4: 30 T.A.C. 115.143 (c) (3)

Finding: INVISTA is complying with the alternative control requirements (ACR) for the affected volatile organic compound (VOC) wastewater stream handled by FT359. Specifically, the stream exits the ADN Production Area when it leaves the Nitrile Aqueous Storage (NAS) tank and is routed to an underground injection well for which INVISTA has been issued a final permit under 30 TAC 305 (Title 40 of the Code of Federal Regulations (40 CFR) Part 144). The injection well complies with 30 TAC 331 (40 CFR Part 122). However, INVISTA has been unable to locate any record indicating that the former owner and operator of the ADN Production Area submitted written notification of the intent to comply with the ACR.

Verification Status: The facility has not been able to locate the notification letter to the Executive Director of TCEQ (dated March 30, 2005).

2. CAMS # 5: 30 T.A.C. 116.116 (c); NSR Permit No. 1302, Special Condition 6

Finding: The facility has two areas with analyzers that vent to atmosphere. In the case of the HCN Analyzer Vents (FH627), the vapors are routed through a scrubber, and what is not condensed is vented to atmosphere. There is no basis for documenting the efficiency of the HCN analyzer's scrubber. Additionally, Nitrile Analyzer Vents (FN 628) are vented directly to atmosphere. The estimated total VOC emitted from the analyzer vents represented by FH 627 and FN 628 is 5 pounds per year or 0.0025 tons per year assuming no recovery or abatement.



Verification Status: The facility has not been able to locate the letter requesting an exception be granted by the Executive Director for the waste stream from the analyzer vents (dated May 4, 2005).